

THE JULY CORP.

IBLA 82-139

Decided July 23, 1982

Appeal from a decision of the Colorado State Office, Bureau of Land Management, denying approval of the assignment of oil and gas lease C-08905.

Affirmed as modified.

1. Oil and Gas Leases: Assignments or Transfers

Where the Bureau of Land Management has denied approval of an assignment for failure to file three completed and manually signed copies in the appropriate BLM office and this Department is made aware of private litigation between the assignor and assignee as to the validity or effect of the assignment, the Department will suspend action on any assignment or request for permission to drill until the parties resolve the controversy by agreement or by litigation.

APPEARANCES: William B. Collister, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

The July Corporation appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated October 26, 1981, denying approval of the assignment of oil and gas lease C-08905. Appellant is the assignee in the transfer at issue; Ralston Oil and Gas Company is the assignor. BLM denied approval of this assignment because appellant failed to file "three (3) completed and manually signed copies [of the assignment] in the appropriate BLM office." (Emphasis in original.) In addition, BLM pointed out that the assignment was not filed within 90 days of date of execution as required by 43 CFR 3106.3-1.

The file shows that on September 15, 1980, BLM received from appellant a request to process the assignment of lease C-08905. Accompanying this request was an original of BLM form 3106-5, bearing the original signature of

J. Edward King on behalf of the July Corporation, assignee. ^{1/} At the top of the form, the words "Conformed Copy" were typed in, presumably by appellant. Part I of this form contained the following language: "Executed this 13th day of May 1977[,] Ralston Oil and Gas Company." In the space provided for the assignor's signature were the typed words "/s/ Jack Ralston Pres."

Approximately 1 month earlier on August 14, 1980, BLM received from appellant three certified copies of this same form, although completed in a slightly different manner. In the space provided for the assignor's signature, there now appeared the handwritten signature of Jack Ralston. Instead of the words "Conformed Copy" at the top of the form, there appeared the volume and page number showing recordation of the form in Gunnison County, Colorado. Ralston's signature is dated May 13, 1977, 3 days before the document's recordation. As above, the signature of J. Edward King is the only original on the form; this signature, dated July 31, 1980, was apparently added to the form after certification by the Gunnison County clerk and recorder on July 1, 1980.

BLM relied upon the instructions on form 3106-5 to deny approval of appellant's submissions. These instructions require the user to "[f]ile three (3) completed and manually signed copies in [the] appropriate land office." ^{2/} In its statement of reasons, appellant explains its inability to file the original of the assignment recorded with Gunnison County, stating that this original has been lost and cannot be replaced. Replacement is impossible, appellant claims, because Ralston Oil and Gas Company would refuse to sign a replacement. Appellant underscores this apparent lack of cooperation between the parties by noting that a lawsuit has been filed in Gunnison County, captioned Ralston Oil and Gas Co., et al. v. The July Corp., et al., No. 80CV43, dealing with the record title interest and overriding royalty interests in lease C-08905. ^{3/}

Whether or not the forms proffered by appellant for approval are properly executed in accordance with the instructions set forth on form 3106-5 is a question going to the validity of the assignment. In the absence of BLM approval on form 3106-5, the assignment of oil and gas lease C-08905 is ineffective. Amoco Production Co., 16 IBLA 215 (1974). The well-established procedure for dealing with cases of this type is set forth in Wallis v. Pan American Petroleum Corp., 384 U.S. 63, 70 (1966) at n.8: "Where there is a private dispute as to the validity or effect of an assignment, the Secretary does not decide the question and he will not approve the assignment or take

^{1/} BLM's decision indicates that two additional copies of this form were also filed. These copies were returned by BLM to appellant in issuing its decision.

^{2/} These instructions appear to have been written in accordance with 30 U.S.C. § 187a (1976) calling for the filing of "three original executed counterparts" of the assignment. Construing this statute are the following cases: Catherine D. Prigge, A-27677 (Sept. 23, 1958), and David L. Mills, A-26949 (Sept. 27, 1954). New regulations appear at 43 CFR 3102.4, 47 FR 8544 (Feb. 26, 1982).

^{3/} The file does not reveal at what time BLM became aware of this litigation.

other action until the parties settle their dispute in court. See McCulloch Oil Corp. of California, Int. Dept. Decision No. A-30208 (Nov. 25, 1964)."

Two additional papers on file support the presence of a private dispute going to the validity or effect of the instant assignment. Yet another form 3106-5, executed on July 2, 1981, in triplicate, is present in the file purporting to assign lease C-08905 to Ernhart, Inc. The assignor is Ralston Oil and Gas Company, and the original signature of Craig Ralston appears on each of the forms. Finally, a letter from Fred W. Pool, dated December 10, 1981, appears in the file informing BLM that the case file should reflect a letter and a copy of a contract between Ralston Oil and Gas Company and Pool Gas Company whereby Pool Gas Company owns a 50 percent interest in lease C-08905.

Therefore, as notice has been given to the Department that this lease is involved in a judicial proceeding to determine ownership of the lease, the most appropriate action by this Department is to leave the lease in status quo until evidence has been filed in the State Office showing the resolution of this proceeding or some agreement by all of the parties resolving the controversies presented here. Cf. Tom Bolack, A-29223 (May 20, 1963). Consequently, BLM is instructed not to approve any assignment of lease C-08905, and Minerals Management Service is instructed not to approve any drilling requests unless evidence is furnished to the State Office of an agreement among the parties or a court decree resolving the controversies here.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed as modified.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge

